

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

iGAMBIT INC.
Expressway Plaza Suite 114
1600 Calebs Path Extension
Hauppauge, New York 11788

Plaintiff,

v.

DIGI-DATA CORPORATION
7165G Columbia Gateway Drive
Columbia, Maryland 21046

Serve Registered Agent:
HIQ Corporate Services, Inc.
715 St. Paul Street
Baltimore, Maryland 21202

Defendant.

Civil Action No.

COMPLAINT

Plaintiff iGambit Inc., (hereinafter “iGambit”), brings this Complaint against Defendant Digi-Data Corporation, a Maryland corporation (hereinafter “Digi-Data”), and in support thereof alleges as follows:

Parties

1. iGambit is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in the State of New York.
2. Digi-Data is a corporation organized and existing under the laws of the State of Maryland, with its principal place of business located in the State of Maryland.

Jurisdiction and Venue

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1). The matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

4. Venue is proper in the District of Maryland pursuant to 28 U.S.C. § 1391. iGambit's claims arise in substantial part in this District, in which Digi-Data has a place of business and transacts business and because the subject agreement selects this Court as the proper forum for this action.

Facts

5. On or about February 23, 2006, iGambit, then known as bigVault Storage Technologies, Inc., and Digi-Data (collectively, the "Parties") entered into an Asset Purchase Agreement governing the sale of iGambit's valuable business assets to Digi-Data (the "Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit 1.

6. Pursuant to the Agreement, Digi-Data agreed to, *inter alia*, pay certain ongoing commissions to iGambit in connection with the purchase of iGambit's assets.

7. On or about February 22, 2012, iGambit issued a statement to Digi-Data stating that the amount of commissions payable to iGambit on Digi-Data's account was \$820,590.00 (the "Account Statement"). A true and correct copy of the Account Statement is attached hereto as Exhibit 2.

8. As reflected in the Account Statement, Digi-Data agreed to the balance reflected in the Account Statement.

9. Thereafter, Digi-Data submitted partial payments to iGambit but failed to pay the full balance reflected in the Account Statement.

10. In a letter dated April 24, 2012, Digi-Data acknowledged that the amount of unpaid commission payable to iGambit as of April 24, 2012 was \$645,590.00 (the “Unpaid Commission Letter”). A true and correct copy of the Unpaid Commission Letter is attached hereto as Exhibit 3.

11. The Unpaid Commission Letter further states, *inter alia*, that Digi-Data would “arrange for a final payment to iGambit.”

12. Thereafter, Digi-Data submitted partial payment to iGambit in the amount of \$50,000.00 but failed to pay the remaining balance of unpaid commissions.

13. In a letter dated July 25, 2012, iGambit demanded payment of the total remaining unpaid commission (the “Demand Letter”). A true and correct copy of the Demand Letter is attached hereto as Exhibit 4.

14. Thereafter, Digi-Data submitted another partial payment to iGambit in the amount of \$25,000.00 but otherwise failed to comply with the Demand Letter.

15. iGambit has performed all conditions precedent to this action or the conditions have occurred or been waived.

COUNT I
(Breach of Contract)

16. iGambit realleges the allegations set forth in Paragraphs 1 through 15 as if set forth fully herein.

17. Digi-Data has breached the Agreement by failing to pay iGambit the amounts due pursuant to the Agreement.

18. iGambit has been injured and damaged by Digi-Data’s breach of the Agreement in the amount of no less than \$570,590.00.

COUNT II
(Account Stated)

19. iGambit realleges the allegations set forth in Paragraphs 1 through 18 as if set forth fully herein.

20. There exists a prior transaction between the Parties – to wit, the Agreement – giving rise to indebtedness from Digi-Data to iGambit.

21. The Account Statement was provided to Digi-Data and stated in the amount of the existing debt.

22. As reflected in both the Account Statement and Unpaid Commission Letter, Digi-Data agreed to the resulting balance owed to iGambit.

23. As reflected in both the Account Statement and Unpaid Commission Letter, Digi-Data expressly or impliedly promised to pay the balance owed to iGambit.

24. Nonetheless, Digi-Data has failed to pay the entire balance owed to iGambit.

25. Digi-Data's failure to pay the balance owed to iGambit has resulted in damages to iGambit in the amount of no less than \$570,590.00.

COUNT III
(Unjust Enrichment)

26. iGambit realleges the allegations set forth in Paragraphs 1 through 25 as if set forth fully herein.

27. iGambit conferred a benefit upon Digi-Data - to wit, the transfer of iGambit's valuable assets to Digi-Data (the "Asset Transfer").

28. Digi-Data had knowledge of the Asset Transfer conferred unto it.

29. Digi-Data voluntarily accepted and retained the benefit of the Asset Transfer conferred unto it.

30. Although Digi-Data made partial payments to iGambit related to the Asset Transfer, Digi-Data failed to pay to iGambit the full value of the Asset Transfer.

31. The circumstances are such that it would be inequitable for Digi-Data to retain the benefit of the Asset Transfer without paying iGambit the full value of same.

WHEREFORE, Plaintiff, iGambit Inc., prays for the following judgment in its favor and against Defendant, Digi-Data:

1. Damages in an amount to be determined at trial.
2. Costs of this action, including reasonable attorneys' fees; and
3. Such other relief in favor of Plaintiff as this Court deems proper and just.

Respectfully submitted,



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